

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 05-0017  
SALES/USE TAX  
Periods of 2001 Through 2003**

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**ISSUES**

**I. Sales/Use Tax: Overpayment of Tax**

**Authority:** Sales Tax Information Bulletin #60 (April 2004); IC 6-2.5-6-14.1

The taxpayer protests and requests a refund on tax related to lump sum contracts.

**STATEMENT OF FACTS**

The taxpayer sells, installs, monitors and services electronic equipment that includes alarm systems. During the course of an audit by the Department, taxpayer concluded it had overpaid sales tax on contracts. The Audit Report did not offset the eventual assessment by the amount that the taxpayer calculated it had overpaid. Thus the taxpayer protested. More facts will be provided as needed below.

**I. Sales/Use Tax: Overpayment of Tax**

**DISCUSSION**

The taxpayer states that it is "an installer of alarm systems including fire, access control, and burglar...." The taxpayer states:

During the course of the audit it was discovered that alarm installation is considered improvement to realty in accordance with Information Bulletin #60 dated April 2004.

And further:

[Taxpayer] has been paying Sales Tax on the entire amount of all its Lump-sum contracts pertaining to alarm installations (which included material markup and labor) per instructions given from a previous auditor. However due to the recent discovery that alarm installation is considered improvement to real property and not tangible personal

property, [Taxpayer] has requested a refund equal to the difference between the tax paid during the audit period ... calculated on the entire lump-sum amount of its contracts, and the correct amount of tax that should have been paid based on the material cost of those contracts.

The taxpayer cites Sales Tax Information Bulletin #60 (April 2004). Information Bulletin #60 states a lump sum contract means (in pertinent part):

[A] contract to incorporate construction materials into real estate with the charge for labor and materials being quoted as one price. The contractor may subsequently furnish a breakdown of the charges for labor and materials without changing the nature of the lump sum contract. For example, a typical lump sum contract provides that the contractor will build a structure for a total stated price such as \$40,000. A lump sum contractor generally must pay sales tax to the vendor who sells the contractor construction materials.

In somewhat contrast to a lump sum contract, Information Bulletin #60 also describes a “time and materials contract.” A time and materials contract is one where “the charge for the labor and materials” is “separately stated and the final contract price being dependent on the cost of the materials and the amount of labor it actually takes to the complete the contract.” Information Bulletin #60 also defines “improvement to real estate,” which in the Examples Section of part “E” includes the installation of “water heaters, water softeners, *alarms*, furnaces, ...” (*Emphasis added*).

Even if, *arguendo*, the Department accepts the taxpayer’s argument that sales tax was overpaid, it was not the taxpayer that overpaid it. With regards to sales tax, the taxpayer is a collection agent for the state, remitting the sales tax that its customers paid. Any overpayment was by the taxpayer’s *customers*. The applicable statute for a refund involving a retail merchant is IC 6-2.5-6-14.1, which states in part that a “retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.” The taxpayer has not shown that it refunded the purported overpayment of tax to its customers.

### **FINDING**

The taxpayer’s protest is denied.